



October 28, 2016

Honorable Stacy L. Ruble  
Secretary  
Postal Regulatory Commission  
901 New York Avenue, NW, Suite 200  
Washington, DC 20268-0001

Dear Mr. Ruble:

Pursuant to 39 U.S.C. § 407(d)(2), and consistent with Order No. 1865 granting the United States Postal Service's Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, the Postal Service is providing, as Attachment 2, a copy of an EMS rate agreement between the Postal Service and a foreign postal operator. The Postal Service has marked the non-public versions of the agreement as "Confidential" and "Non-Public" because it contains information considered confidential and commercially sensitive by the affected postal operator and the Postal Service.

The Postal Service considers certain portions of each such agreement to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, each such agreement contains the commercial information of the affected postal operator, and, as such, certain portions of each agreement are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached, as Attachment 1, an application for non-public treatment of certain portions of the agreement under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the agreement becomes subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operator.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anthony Alverno".

Anthony Alverno  
Chief Counsel  
Global Business & Service Development

Enclosures

**APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR  
NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed EMS rate agreement (“Agreement”). The Postal Service is transmitting the Agreement to the Postal Regulatory Commission (“Commission”) in accordance with 39 U.S.C. § 407(d) and consistent with Order No. 1865 granting the Postal Service’s Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, filed on September 19, 2013. The unredacted Agreement is being filed under seal, while a redacted copy is included with the public filing. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>1</sup> Because the

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<sup>1</sup> The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish

portions of material filed non-publicly fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that this material is exempt from public disclosure and grant its application for its non-public treatment.

**(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

The Postal Service believes that the postal operator that is a signatory to the Agreement is the only third party with a proprietary interest in the material. Due to the sensitivity in providing the identification of the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operator.<sup>2</sup> The Postal Service identifies as an appropriate contact person Jimmy Ortiz, Manager, International Postal Relations, United States Postal Service. Mr. Ortiz's phone number is (202) 268-6356, and his email address is jimmy.ortiz@usps.gov.

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

As required by 39 U.S.C. § 407(d), the Postal Service is transmitting these documents concerning EMS service, which is with a foreign postal operator that

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a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

<sup>2</sup> The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's response might be construed as beyond the scope of this exception, the Postal Service respectfully requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, in light of the practical considerations outlined herein.

is an agency of a foreign government. The documents transmitted consist of an Agreement that defines the terms on which the Postal Service and the relevant operator exchange Express Mail Service (EMS) items, including rate information. The Postal Service maintains that the redacted portions of the document should remain confidential.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Competitors could use the information to undermine the Postal Service's position in negotiations, as well as the position of the foreign postal operator that is the signatory to the Agreement. Competitors could also use the identity of the relevant foreign postal operator to target that country for business to the detriment of the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Harm: Foreign postal operators could use the rate and discount information to undermine the Postal Service's position in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the Postal Service in an effort to lower the rates charged for delivery of EMS in the United States, or raise the rates charged for U.S. origin shipments.

Harm: Other foreign postal operators could use the rate and discount information to undermine the position of the respective foreign postal operator in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the foreign postal operator in an effort to lower or raise the rates charged for delivery of EMS in those countries.

Alternatively, competitors use the pricing information to develop competing products.

Harm: Competitors could use the knowledge that the Postal Service has entered into arrangements for discounted EMS rates with certain foreign postal operators to the Postal Service's detriment when negotiating business arrangements with shippers in those countries.

Hypothetical: The identity of the countries with which the Postal Service has entered into arrangements for discounted EMS rates is disclosed to the public.

Another expedited delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The expedited delivery service determines that those countries provide a strategic market for increased competition, and then markets itself to

those countries' postal operators as offering better rates and performance thresholds than the Postal Service.

Harm: Competitors could use performance thresholds to assess vulnerabilities and focus sales and marketing efforts to the postal operators' detriment.

Hypothetical: The information about EMS performance thresholds is disclosed to the public. Another expedited delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses the postal performance level as a concrete comparison point, marketing itself to potential customers as offering performance better than the postal operators engaged in the exchange of EMS.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the material filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets for international expedited and parcels products (including private sector integrators), as well as their consultants and attorneys. Additionally, the Postal Service believes that, except for foreign postal operator staff that already have access to this information, actual or potential customers of the Postal Service for products related to inbound EMS and Outbound Priority Mail Express International, or similar products, should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.

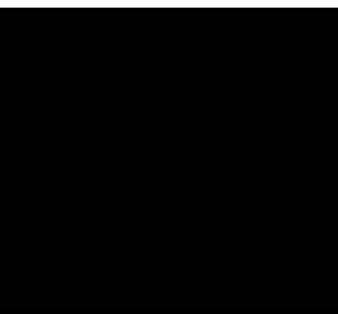
***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified material.

LEA EMERSON  
EXECUTIVE DIRECTOR  
INTERNATIONAL POSTAL AFFAIRS



March 18, 2016



Dear [REDACTED]

I am writing in follow up to your February 2, 2016 email, as well as our letters and email exchanges regarding EMS rates. Upon reviewing your proposal, I am pleased to inform you that we are in a position to accept your latest proposal.

The EMS PfP rates of [REDACTED] SDR per item and [REDACTED] SDR per kilogram are the preferred rates available to [REDACTED] as a valuable EMS PfP participating operator. These rates resulted in a [REDACTED]

As stated in previous correspondence, [REDACTED] is a preferred partner and in the interest of promoting growth in our mutual EMS service, we are willing to offer [REDACTED] percent discount off the preferred EMS PfP rates. The average weight of [REDACTED] kg per EMS item from [REDACTED] to the United States and the EMS PfP rates of [REDACTED] SDR per item and [REDACTED] SDR per kilogram result in a [REDACTED]

The following rates will apply for calendar year 2016 and will be uploaded into our international account settlement system as noted below:

- United States to [REDACTED] [REDACTED] SDR per item
- [REDACTED] to the United States: [REDACTED] SDR per item

Please confirm your acceptance of these rates for 2016 by counter signature below and return a copy of the signed letter to Mr. Jimmy Ortiz, email: [jimmy.ortiz@usps.gov](mailto:jimmy.ortiz@usps.gov).

In addition, the United States Postal Service (USPS) is subject to regulation by the Postal Regulatory Commission (PRC), an independent U.S. government agency. Under U.S. law, the USPS is required to file all commercial agreements signed with an agency of a foreign government, including this letter.

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The USPS believes that it is possible that your organization may have a proprietary interest in information in this letter. Because we consider it to be sensitive commercial information, we will designate the letter as "non-public." In other words, the information in the letter will not be publicly available on the PRC's website; rather, it will be available only to the PRC staff and third persons who are able to certify that they are not involved in competitive decision making.

Under U.S. law (Title 39, Code of Federal Regulations, Part 3007), whenever the USPS files information non-publicly, the USPS is required to notify any organization that may have an interest in the nonpublic information that it is filing such information with the Commission, together with an application for the PRC to treat the information as non-public material. As required by its regulations, we will identify USPS, specifically Jimmy Ortiz, as the PRC's point of contact in the event that additional notices need to be sent concerning this filing. This is done to protect your confidentiality. USPS will inform you of any such notices it receives.

We are also required to notify you that your organization may address any confidentiality concerns that you may have directly with the PRC. At this time, we do not believe any action is needed on the part of your organization. However, we are required to advise you that the procedure for making a third-party application for non-public treatment of materials believed to be protected from disclosure may be found at Title 39, Code of Federal Regulations, Section 3007.22. You can view these regulations at the PRC's website, <http://www.prc.gov/Docs/63/63467/Order225.pdf>.

Again, we do not believe there is any need for action on your part; we are simply fulfilling our obligation to give your organization notice of the nonpublic filing, as required by U.S. law. If you have any questions or concerns, please feel free to contact Anthony Alverno, Chief Counsel, U.S. Postal Service Law Department, at 202-268-2997 or via e-mail at [anthony.f.alverno@usps.gov](mailto:anthony.f.alverno@usps.gov).

We look forward to continuing to grow the important EMS business between us.

Sincerely,



Lea Emerson

Enclosure

Acceptance of Rates:

Name

Title

Date

18, October 2016